

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**LARRY W. CAIN, JR.,**

**Plaintiff,**

**v.**

**Case No. 05-C-463**

**WARDEN OF FCI OXFORD,**

**Defendant.**

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**ORDER**

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Plaintiff Larry W. Cain, who is incarcerated at the Federal Prison Camp in Oxford, Wisconsin, filed this civil action under the Administrative Procedures Act (APA) and 28 U.S.C. §1331. On June 20, 2005, this action was dismissed for failure exhaust administrative remedies pursuant to 42 U.S.C. § 1997e(a). Judgment was entered dismissing this action on June 20, 2005. Before the court is plaintiff's "Motion to Stay Mandate."

Cain's motion requests that the court stay the order dismissing this case to give him reasonable time to exhaust his administrative remedies, "or in the alternative to amend its Order of June 20, 2005, and dismiss this Complaint without prejudice allowing Cain to refile once his remedies are exhausted." (Pl.'s Mot. at 2.)

However, "all dismissals under § 1997e(a) should be without prejudice." Ford v. Johnson, 362 F.3d 395, 401 (7th Cir. 2004). Under the law of this circuit, since this action was dismissed for failure to exhaust administrative remedies pursuant to 42 U.S.C. §

1997e(a), the dismissal was without prejudice. Accordingly, Cain's motion requesting dismissal without prejudice is not necessary and will be denied as moot.

**ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the plaintiff's motion to stay mandate (Docket #4) be and hereby is **DENIED** as moot.

Dated at Milwaukee, Wisconsin this 9 day of January, 2006.

BY THE COURT:

/s \_\_\_\_\_  
LYNN ADELMAN  
District Judge